

JUDGE KAPLAN

12 CIV 6734

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Redacted Pursuant to Judge Kaplan's Order

Attorneys for Plaintiffs

Ben & Jerry's Homemade Inc.

and Conopco, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BEN & JERRY'S HOMEMADE, INC. and  
CONOPCO, INC.,

Plaintiffs,

v.

RODAX DISTRIBUTORS, INC. d/b/a  
CABALLERO VIDEO, M. MORRIS, INC. d/b/a  
CABALLERO VIDEO, DANIEL MAMANE and  
TOMER YOFFE,

Defendants.

Case No.:

**DECLARATION OF GREGORY P.  
GULIA IN SUPPORT OF  
PLAINTIFFS' APPLICATION FOR A  
TEMPORARY RESTRAINING  
ORDER, RECALL ORDER AND  
ORDER TO SHOW CAUSE FOR A  
PRELIMINARY INJUNCTION**

I hereby declare:

1. I am a partner at the law firm Duane Morris LLP, attorneys for plaintiffs in the above-captioned action, Ben & Jerry's Homemade, Inc. ("Ben & Jerry's") and Conopco, Inc. ("Conopco") (collectively, "Plaintiffs" or "Unilever"). I respectfully submit this declaration in support of Plaintiffs' application for a temporary restraining order, recall order, and order to show cause for a preliminary injunction enjoining defendants from diluting and infringing Plaintiffs' famous BEN & JERRY'S® trademarks, trade dress, logos, ice cream flavor names, and artwork.

Defendants' Infringing Hardcore Pornographic Films

2. Attached hereto as "Exhibit A" are photographs of the product packaging and label on the "BEN & CHERRY'S" HAIRY GARCIA DVD that is at issue in this action.

3. Attached hereto as "Exhibit B" are photographs of the product packaging and label on the "BEN & CHERRY'S" AMERICONE CREAM DVD that is at issue in this action.

4. Attached hereto as "Exhibit C" are photographs of the product packaging and label on the "BEN & CHERRY'S" SUPER FAT & CHUNKY DVD that is at issue in this action.

5. Attached hereto as "Exhibit D" are photographs of the product packaging and label on the "BEN & CHERRY'S" EVERYTHING BUT THE . . . BUTT DVD that is at issue in this action.

6. Attached hereto as "Exhibit E" are photographs of the product packaging and label on the "BEN & CHERRY'S" LATE NIGHT SNATCH DVD that is at issue in this action.

7. Attached hereto as "Exhibit F" are photographs of the product packaging and label on the "BEN & CHERRY'S" BANANA CLIT DVD that is at issue in this action.

8. Attached hereto as "Exhibit G" are photographs of the product packaging and label on the "BEN & CHERRY'S" COCONUT 7 LAY-HER BAR DVD that is at issue in this action.

9. Attached hereto as "Exhibit H" are photographs of the product packaging and label on the "BEN & CHERRY'S" CHOCOLATE FUDGE BABES DVD that is at issue in this action.

10. Attached hereto as "Exhibit I" are photographs of the product packaging and label on the "BEN & CHERRY'S" BOSTON CREAM THIGH DVD that is at issue in this action.

11. Attached hereto as "Exhibit J" are photographs of the product packaging and label on the "BEN & CHERRY'S" PEANUT BUTTER D-CUPS DVD that is at issue in this action.


Balance of the Hardships

12. In contrast to the irreparable harm suffered by the Plaintiffs, the business of the defendants in this action, Rodax Distributors, Inc. d/b/a Caballero Video, M. Morris, Inc. d/b/a Caballero Video and TOMER YOFFE, will suffer very limited effects if the requested injunctive relief enjoining their continued sale of the "BEN & CHERRY'S" products is granted. Based on the Defendants' website and product catalogue, Defendants' "BEN & CHERRY'S" films constitute only a tiny fragment of the vast library of pornographic films that Defendants produce, market, distribute and sell. Indeed, according to Defendants' websites, Defendants currently carry over 2,918 DVDs on Defendants' retail website located at [bestdvdz.com](http://bestdvdz.com) and over 1427 DVDs on Defendants' wholesale website located at [caballerovip.com](http://caballerovip.com). Enjoining the continued sale of the illegitimate "BEN & CHERRY'S" products will not cause Defendants any great hardship.

13. Furthermore, upon information and belief, removing the infringing products from Defendants' stores, websites and marketing materials would not be costly or overly burdensome.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
September \_\_, 2012

  
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Gregory P. Gulia